

REGULATORY REVIEW CHECKLIST

To accompany Preliminary Determination Package

Agency Commonwealth Transportation Board (Va. Dept. of Transportation)

Regulation title Rules & Regulations Governing Relocation Assistance (24 VAC 30-40-10 et seq.) (Note: existing regulation to be repealed and replaced by regulation with same title and numbered 24 VAC 30-41-10 et seq.)

Purpose of the regulation Proposed amendments to existing regulation which establishes the policies and procedures under which VDOT will provide relocation services and payment to property owners displaced by highway improvement projects.

Summary of items attached:

- Item 1: An explanation of the specific reason for the proposed regulation.
- Item 2: A statement identifying the source of the agency legal authority to promulgate the contemplated regulations and a statement as to whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate. **(Be sure to attach a copy of all cited legal provisions).**
- Item 3: A statement setting forth the reasoning by which the agency has concluded that the contemplated regulation is essential to protect the health, safety, or welfare of citizens or for the efficient and economical performance of an important governmental function.
- Item 4: A statement describing the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered or to be considered (to the extent known), and the reasoning by which the agency has rejected any of the alternatives considered.
- Item 5: A statement describing the likely impact of the proposed regulation on family formation, stability, and autonomy. If adverse impacts are anticipated, include a discussion of steps to be taken which will minimize the impacts.

David R. Gehr

Signature of Agency head

6/10/98

Date forwarded to
DPB & Secretary

**AMENDED ITEMS INCLUDED
IN REGULATORY REVIEW CHECKLIST
FOR PRELIMINARY DETERMINATION PACKAGE**

(June 23, 1998)

Item 1 - *Specific reason for regulation:*

To acquire the rights of way necessary for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, it often becomes necessary to displace individuals, families, businesses, farms, and non-profit organizations. To ensure to the maximum extent possible the prompt and equitable relocation and reestablishment of these displacees, it is necessary for a uniform policy to be established.

This policy will ensure adequate relocation services and will provide moving, replacement housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement programs. The contemplated regulatory action amends existing regulations as permitted by federal and state laws and is intended to (i) clarify language, and (ii) streamline the process, thereby fulfilling an important and essential governmental function.

The regulatory actions proposed resulted from a review of internal instructional manuals, memoranda, policies, and procedures carried out by VDOT's Right of Way and Utilities Division, rather than a review resulting from Executive Order (15) 94. Written materials and procedures will be revised to standardize usage and update references as needed.

Changes proposed for these regulatory actions made at agency discretion include the following:

- text will be rewritten in less legalistic, more conversational language to facilitate understanding;
- the process for sending vacating notices to displacees specified in 24 VAC 30-40-300 (see attached) will be revised as permitted by Section 24.203(c)(3) of the Federal code to allow them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status; and
- examples of payment calculations will be included to clarify procedures.

Other changes may be made to the regulation as public comment is collected.

Item 2 - *Identification of agency legal authority to promulgate regulation, with statement as to whether contemplated regulation is mandated by Virginia law, federal law, or regulation:*

This regulation is based on the following federal and State laws:

- Public Law 91-646, as amended (42 USC, § 4601 et seq.) (federal law);
- 49 CFR Part 24 (federal regulation to implement pertinent amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970);
- Code of Virginia - §§ 33.1-12 (5) and 25-253.

Copies of 1994 documentation from the Office of the Attorney General affirming statutory authority to promulgate shown as Attachment A.

Item 3 - *Statement of reasoning whereby agency has concluded that the contemplated regulation is essential to protect the health, safety, or welfare of citizens, or for the efficient and economical performance of an essential governmental function.*

Providing safe and hygienic facilities for families and businesses relocated due to highway projects is essential to the protection of the health, safety, and welfare of the citizens, and is an essential part of VDOT's transportation functions.

Item 4 - *Statement describing process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the essential purpose of the regulation, the alternatives considered, and the reasoning by which these alternatives were rejected:*

Since the regulations are based on federal and State law, there are no less burdensome or less intrusive means for achieving the essential purpose of the regulation besides issuing it in its current form. The Department has an obligation to ensure that certain housing standards are maintained with respect to safety and hygiene; it also must ensure that public funds are spent prudently. Therefore, the regulation is the best, least burdensome means of achieving these goals.

Item 5 - *Statement describing the likely impact of the proposed regulation on family formation, stability, and autonomy. If adverse impacts are anticipated, include a discussion of steps to be taken which will minimize the impacts.*

By ensuring that certain housing standards are maintained with respect to safety and hygiene, the proposed revision to the existing regulation will not have an adverse impact on family formation, stability, and autonomy. In fact, depending on the economic circumstances of specific affected families, this regulation could improve the living standards of a family.

SAMPLE REGULATORY TEXT TO BE AMENDED

24 VAC30-40-300. 90-day notice to vacate.

A. The construction or development of a highway project must be scheduled so that to the greatest extent practicable no person lawfully occupying real property will be required to move from a dwelling, business, farm or nonprofit organization without at least 90 days written notice of the intended vacation date from the department. There may be instances when additional time would be appropriate due to the size of the operation of a business, farm or nonprofit organization.

B. Except as outlined in subsection C of this section, a 90-day notice will be sent to owners and tenants simultaneously with the acceptance of an option or upon confirmation of an offer in writing prior to the filing of a certificate of deposit except as noted in 24VAC30-40-290 of this chapter. The notice must include a specific date by which the property must be vacated. If at the expiration of the 90-day notice, comparable replacement housing is not available to the displaced individual or family, a subsequent specific vacation date must be established and furnished in writing. A comparable replacement dwelling will be considered to have been made available to a person, if:

1. The person is informed of its location; and
2. The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
3. Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property

C. When circumstances are such that negotiations proceeded prior to establishing the exact amount of the replacement housing supplement entitlement, a 90-day notice will not be sent to the displacee until such time as the district is able to establish the appropriate supplement and the displacee is advised accordingly. In these instances, the negotiation report (RW-24) will stipulate that the 90-day notice is not to be issued at that time. Subsequently, when the supplement is established and provided the displacee, the negotiation section is to issue the appropriate 90-day notice.

D. Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the department determines that:

1. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
2. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
3. In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.